

## **RULE PROPOSAL**

### **HEALTH AND SENIOR SERVICES**

#### **DIVISION OF SENIOR BENEFITS AND UTILIZATION MANAGEMENT**

#### **PHARMACEUTICAL ASSISTANCE TO THE AGED AND DISABLED ELIGIBILITY MANUAL**

#### **CONFIDENTIALITY AND DISCLOSURE OF INFORMATION**

#### **Proposed Amendment: N.J.A.C. 8:83-6.11**

Authorized By: Clifton R. Lacy, M.D., Commissioner, Department of Health and Senior Services.

Authority: N.J.S.A. 30:4D-20 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-226

Submit written comments by August 6, 2004 to:  
Kathleen Mason, Assistant Commissioner  
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Department of Health and Senior Services  
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The agency proposal follows:

#### **Summary**

The Department of Health and Senior Services (Department or DHSS) is responsible for administering the New Jersey Pharmaceutical Assistance to the Aged and Disabled (PAAD) program pursuant to Chapter 194, Laws of 1975 as amended and the Executive Reorganization Plan No. 001-1996. This proposal amends the regulations that are currently at N.J.A.C. 8:83-6.11(c).

The Department is proposing an amendment to N.J.A.C. 8:83-6.11, which addresses confidentiality and disclosure of information. Currently under this rule, all personally identifiable information regarding applicants or beneficiaries obtained or maintained by the program are required to be held in confidence and shall not be released without the written consent of the applicant or beneficiaries or their authorized agent. (See N.J.A.C. 8:83-6.11(a)).

Disclosure of information without the consent of the applicant, beneficiary or their authorized agent is limited to purposes directly connected with the administration of the program pursuant to State law and regulations. (See N.J.A.C. 8:83-6.11(b)).

The general prohibition to the release of personally identifiable information is conditioned upon certain exceptions that are contained in N.J.A.C. 8:83-6.11(c)1 through 9. An additional 10<sup>th</sup> exception has been added to the rule to allow the Department to release certain identifiable information and files regarding applicants or beneficiaries to Medicare endorsed discount plans, Medicare Advantage Plans, Medicare Prescription Drug Plans and the Center for Medicare and Medicaid Services (CMS) for the coordination of the Medicare Prescription Drug Program with the PAAD Program.

As the Department of Health and Senior Services has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

#### **Social Impact**

There exists within the PAAD records approximately 196,619 potential persons, who may be eligible for Medicare Drug coverage under the Medicare Prescription Drug Improvement and Modernization Act of 2003. If those eligible persons take advantage of the program, they could reduce PAAD expenditures by having Medicare Drug benefits be primary and PAAD benefits as secondary coverage. By permitting release of certain identifiable information regarding applicants or beneficiaries to CMS and companies administering the Medicare drug programs, the Department is facilitating the coordination of benefits.

#### **Economic Impact**

It is anticipated that there will be a reduction of PAAD expenditures beginning in Fiscal Year (FY) 2005 and increasing in FY 2006 if Medicare drug coverage is used as primary coverage and PAAD as secondary coverage. If PAAD could cost avoid prescription claims for all PAAD beneficiaries eligible for Transitional Assistance under the Medicare Drug Discount Card Program, the savings in FY 2005 is estimated between \$49 million to \$98 million depending upon beneficiary drug usage.

#### **Federal Standards Statement**

There are no Federal requirements or standards concerning the subject matter of this rulemaking. The proposed amendment clarifies language contained within the current rule at N.J.A.C. 8:83-6.11(c)3 to specifically cover Medicare approved plans and the Center for Medicare and Medicaid Services. Therefore, no Federal standards analysis is required.

#### **Jobs Impact**

The proposed amendment would not have any impact on the overall gain or loss of jobs in the State as a result of its adoption.

### **Agriculture Industry Impact**

Pursuant to N.J.S.A. 4:1C-10.3, the Right to Farm Act, and N.J.S.A. 52:14B-4(a)2 of the Administrative Procedure Act, the Department does not expect the proposed amendment to have any impact on the agriculture industry.

### **Regulatory Flexibility Statement**

The proposed amendment will have no impact upon small businesses, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment applies to governmental entities and certain Medicare approved plans. The Medicare approved plans are business organizations which, by definition, are larger than 100 person businesses. One of the qualifying criteria for Medicare was that these entities had a five year history of serving over a million subscribers. Only 28 entities in the United States qualified; for example, AARP, Horizon Blue Cross and Blue Shield and Medco. These are either insurance companies or pharmacy benefit managers all having thousands of employees and therefore, not considered small businesses. Therefore, a regulatory flexibility analysis is not required.

### **Smart Growth Impact**

The proposed amendment will have no impact on the achievement of smart growth or implementation of the State Development and Redevelopment Plan.

**Full text** of the proposal follows (additions indicated in boldface **thus**):

8:83-6.11 Confidentiality and disclosure of information

(a)-(b) (No change.)

(c) The prohibition of (a) above against unauthorized disclosure shall not be construed to prevent:

1-9. (No change.)

**10. The release of beneficiary information or files to Medicare endorsed discount plans, Medicare Advantage Plans, Medicare Prescription Drug Plans or the Center for Medicare and Medicaid Services for the purpose of coordination of benefits between the Medicare Drug Plan and PAAD.**